

THE EDITORIAL PAGE

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THE NEWSPAPER'S VIEW

Mental health law needs to be clarified, not changed

In most situations, a person is free to refuse treatment from a physician even if the physician believes it is in the person's best interest. For the physician to do otherwise would violate the person's autonomy and, indeed, would constitute assault.

The situation is more difficult when the person's autonomy is compromised, as is often the case when the person is suffering from mental illness. People who are mentally ill are sometimes unaware they need help, which is why B.C.'s Mental Health Act provides that in certain situations they may be involuntarily admitted to a hospital.

This is a controversial measure, since it involves confining and treating people against their will for their own good. And, indeed, many people who have experienced involuntary admission claim it was a traumatic event that caused them significant harm. But on the other side, many people who have not been able to get mentally ill family members admitted to a hospital have had to stand by helplessly as they watched their loved ones deteriorate and, sometimes, commit suicide.

The challenge is to formulate a law that strikes a balance between protecting patients' civil liberties and ensuring that they receive help when they need it. B.C.'s Mental Health Act has done a pretty good job in this respect, though one recent event has called this into question.

Marek Kwapiszewski died in 2008 after jumping off the Granville Street Bridge. It was reported that he was displaying the symptoms of schizophrenia and that his sister had made 16 unsuccessful attempts to have him involuntarily admitted to a hospital. The case led to calls that the law be reformed.

Yet the real problem seems to be people's — including psychiatrists' — understanding of the law, since the law itself allows for involuntary admission in many circumstances.

For a person to be involuntarily admitted, four criteria must be met: The person must be suffering from a mental disorder that impairs his or her ability to react to the environment or associate with others; the person must require psychiatric treatment in a

hospital; care must be necessary to prevent the person's "substantial mental or physical deterioration" or for the person's "own protection or the protection of others;" and the person must not be willing to become a voluntary patient.

The third criterion here is the one that is usually in issue. According to representatives with the North Shore Schizophrenia Society, physicians typically use dangerousness — either to oneself or others — as the basis for making an involuntary admission decision.

Yet that's not what the law says — or at least that's not all it says. In addition to dangerousness (protection of the person or others), the law is clear that a person can be involuntarily admitted if he or she is deteriorating substantially. If physicians are ignoring that, then it's a problem, but it's not a problem with the law. And the way to solve that problem is to educate physicians about the law, not to change the law itself.

Furthermore, it's possible physicians don't understand what the law means when it refers to dangerousness — that is, when it speaks of protection of the person or of other people. Many people think that refers only to physical protection, but that's not the way the courts have interpreted it.

On the contrary, in the case of *McCorkell vs. Riverview Hospital*, the B.C. Supreme Court suggested "protection" involves the notion of harm, and that could include harm to the person's social, family, vocational or financial life. A mentally ill person could be involuntarily admitted to a hospital if, for example, his behaviour is jeopardizing his or her job or financial well-being.

This is extremely broad. And it reveals that criteria for involuntary admission don't need to be broadened.

But physicians might well need to be educated about what the law means. And on that point, Vancouver Coastal Health has stated that it plans to meet with mental health leaders to provide operational definitions of "deterioration" and "in need of protection." This is a worthwhile endeavour and could prevent future tragic cases, provided results are clearly communicated to the people who must make difficult involuntary-admission decisions.